

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF WYOMING

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3 BCB CHEYENNE, LLC, d/b/a DOCKET NO. 23-CV-00079-ABJ  
4 BISON BLOCKCHAIN, a Wyoming (Pages 1 through 56)  
5 limited liability company,  
6 Plaintiff,  
7 vs.  
8 MINEONE WYOMING DATA CENTER, Cheyenne, Wyoming  
9 LLC, a Delaware limited Thursday, September 26, 2024  
10 liability company; MINEONE 3:22 p.m.  
11 PARTNERS, LLC, a Delaware  
12 limited liability company;  
13 TERRA CRYPTO, INC., a Delaware  
14 corporation; BIT ORIGIN LTD.,  
15 a Cayman Island company;  
16 SONICHASH, LLC, a Delaware  
17 limited liability company;  
18 BITMAIN TECHNOLOGIES HOLDING  
19 COMPANY, a Cayman Island  
20 company; BITMAIN TECHNOLOGIES  
21 GEORGIA LIMITED, a Georgia  
22 corporation; and JOHN DOES 1-20,  
23 related persons and companies  
24 who control or direct some or  
25 all of the named Defendants,  
Defendants.

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18 TRANSCRIPT OF MOTION HEARING PROCEEDINGS  
19 MOTION TO AMEND SCHEDULING ORDER

20 BEFORE THE HONORABLE ALAN B. JOHNSON  
21 UNITED STATES DISTRICT JUDGE

22  
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*Proceedings reported with realtime stenography;*  
*transcript produced with computer-aided transcription.*

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1 (Proceedings commenced 3:22 p.m., September 26, 2024.)

2 THE COURT: I see my screen in this -- at this  
3 time -- sorry for the delay caused by another matter.

4 But I look at my screen, and I see BCB Cheyenne, a  
5 limited liability company, doing business as Bison Blockchain,  
6 who has sued in this court MineOne Wyoming Data Center,  
7 MineOne Partners, and others at this point.

8 Looking at the screen, I see Patrick Murphy  
9 representing the plaintiff in this case; I think Scott Ortiz  
10 has recently entered an appearance; Paula Colbath, who is lead  
11 counsel for MineOne Data Center, LLC; Marc Gottlieb, present  
12 today. And then -- and David Forrest. I thank you,  
13 Mr. Forrest. And, more locally on the defense side, Sean  
14 Larson, Kari Hartman, and Meggan Hathaway.

15 As I understand it, there was an earlier hearing  
16 before Stephanie Hambrick, the Magistrate.

17 Is that true, Mr. Murphy?

18 MR. MURPHY: Your Honor, there have been several  
19 meetings with Magistrate Judge Hambrick. I'm not sure which  
20 one you're talking about, but there have been several.

21 THE COURT: I'm talking about today.

22 MR. MURPHY: Oh, I'm not aware of any today. You're  
23 our only audience today.

24 THE COURT: Well, I'm glad to hear that.

25 Let me talk about a couple thoughts I have but --

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REMARKS BY THE COURT

5

1 I don't think they'll be particularly helpful, but they'll  
2 make me feel better -- in this case, which is largely, in my  
3 view, a disaster at this point in terms of trial preparation.

4 Both the plaintiffs and the defendants in this action  
5 entered into a contractual relationship, anticipating that  
6 they would both be, at this point, busy raking in lots of  
7 Bitcoins, which convert into truckloads of dollars to their  
8 mutual benefit.

9 BCB had the good fortune to convince the powers that  
10 be in Wyoming to give them access to substantial power  
11 resources, which would be paid for to the local power company.

12 MineOne involved a group of businessmen, most of  
13 him -- most of whom hail from China, where Bitcoin mining is  
14 not a thing that is typically approved there or is a business  
15 model. It is here in the United States.

16 Looking for opportunity, they encountered BCB and the  
17 folks with BCB, inexperienced as they were, and the parties  
18 negotiated a contract, anticipating good things.

19 BCB invested its resource, which largely was the  
20 access to power and the talent of the principals, and MineOne  
21 and others their investment of sizeable amounts of money.

22 We find themselves now mutually accusing one another  
23 of breach of contract and seeking to recover a pot of money  
24 that is now earning interest under control of the Court.

25 Regardless of the merits of any claim in this matter,

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REMARKS BY THE COURT

6

1 both parties, it would appear to me, have suffered a  
2 frustration of what their original belief was that this  
3 arrangement would yield for them and, certainly, for the  
4 Chinese people or the foreign -- folks from China, losing a  
5 very substantial investment of -- of money and, for BCB, the  
6 opportunity to turn, for profit, their early access to a power  
7 resource in this case.

8                   Unknown to -- well, maybe unknown. I don't know.  
9 But, certainly, as to MineOne principals, they come from a  
10 place where every fault isn't the source of litigation;  
11 really, where the Government owns each individual. Except for  
12 domestic problems, there's really not much need to resort to  
13 courts at the drop of a hat.

14                   They find themselves in the United States of North  
15 America where, for any reason at all, a jury can be assembled,  
16 lawyers hired, huge amounts of money spent to litigate any  
17 point at all. I suppose their learning curve is very  
18 substantial.

19                   Despite the circumstances of this case, plaintiff is  
20 highly advantaged, it seems to me, in this litigation,  
21 convenient to the Court, access to most of the individuals  
22 connected with this case, in the United States with all of our  
23 communication and transportation system, social media, and  
24 abilities to communicate easily. And defendants are  
25 disadvantaged in terms of their ability to travel like an

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REMARKS BY THE COURT

7

1 American citizen can, across any border at a moment's notice  
2 and -- and be available to -- to testify.

3 We are months down the road in this case and have  
4 spent an enormous amount of money and resources sorting out,  
5 it seems to me, whether or not there might be a jurisdictional  
6 defect in this case -- and that's important because you'd hate  
7 to go through this entire process and find out from the  
8 Tenth Circuit that somebody down there has decided that  
9 jurisdiction didn't exist -- and finding at every turn the  
10 personal animosities that exist among counsel.

11 I haven't been in a position to form any personal  
12 animosity or feeling one way or the other about any of the  
13 principals in the case going forward. I don't know them.  
14 I've seen Mr. Murphy's sons at locations but, other than  
15 saying hello, have no particular knowledge of them and  
16 certainly don't have any knowledge of the individuals from  
17 other places.

18 And part of this case is significantly affected by an  
19 action taken by the President of the United States. The Court  
20 has no knowledge whether or not the President of the United  
21 States -- had Mr. Murphy gone to the White House and got down  
22 on bended knee and pled with President Biden to not do what he  
23 did -- that he would have changed his mind -- or that a  
24 Chinaman had arrived at the President's White House and tried  
25 to enter and speak to the President, the President would say,

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REMARKS BY THE COURT

8

1 "Oh, no problem."

2           Everything I'm seeing, I think it would be just sheer  
3 speculation to know that the result would be one bit different  
4 regardless of who, what, or how the situation was presented to  
5 the President with regard to the application of that law and  
6 the process.

7           We have a trial date. I intend to keep the trial  
8 date. But we may be in a situation where no experts testify  
9 and maybe nobody testifies. Or we do it on affidavits or we  
10 do it some other way at this point.

11           But there will be a decision. I am 100 percent  
12 confident that there will be every reason to appeal that  
13 decision, whatever it is, and that you'll be successful. The  
14 Tenth Circuit will sort out the pepper from the fly specks,  
15 and they'll undoubtedly find some reason in this mess to send  
16 it back again for further proceedings, either before me or  
17 before someone else, and the process will continue.

18           It just seems that there comes a time when -- when  
19 reason should take over and -- and -- and everybody should --  
20 at least as adversaries; not enemies, as adversaries -- work  
21 together to resolve -- find a resolution or to take this case  
22 in the most efficient way possible to trial.

23           I don't mind -- you know, we're here to try cases,  
24 and we're glad to do that. But we're going to spend an  
25 enormous amount of resources with clerk time -- and there are

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ARGUMENT BY MS. COLBATH

9

1 lots of other cases with motions that need to be resolved  
2 sitting here on the Court docket -- resolving tons of motions  
3 for sanctions and -- and things that represent bad feelings in  
4 this case -- which we'll do. But I don't see that it's  
5 progressing the case very far.

6 So that's my piece. At this point I feel that the  
7 parties have genuine interests on each side and -- and are  
8 deserving of serious consideration of those interests.

9 It's my understanding that there is a need at this  
10 point for some adjustment to allow some discovery to take  
11 place and that Mr. Murphy has responded to that.

12 So, Ms. Colbath, I'll let you go first.

13 MS. COLBATH: May it please the Court. Thank you,  
14 Your Honor.

15 And --

16 THE COURT REPORTER: I can't hear you.

17 (Reporter seeks clarification.)

18 THE COURT: We've lost you again.

19 I don't know if you can --

20 MR. GOTTLIEB: Paula, you're on -- oh, there you go.  
21 Okay.

22 MS. COLBATH: May it please the Court -- I apologize  
23 for that. But I appreciate your insights, Your Honor.

24 We certainly always have full and robust discussions  
25 about the Court's comments and -- and will do so. I'm not

1 going to comment on them. I certainly agree with many of  
2 them.

3 You know, I do find us all in a very unfortunate  
4 situation. I think, if you look at the docket, you will see,  
5 though, that my clients have been very conservative in filing  
6 motions and have filed them when -- primarily -- when Judge  
7 Hambrick or Judge Carman or Judge Rankin couldn't resolve  
8 things and gave permission.

9 They did their best. We had multiple meet and  
10 confers. And so I view -- not just in this case but the way  
11 I practice -- motions are expensive for clients, and they are  
12 a last resort.

13 There is a motion here. I think that is largely  
14 driven by the plaintiff being represented by a family member.  
15 And I -- I do my best to have meaningful conversations.  
16 I will continue to do so.

17 Just by way of example, this is high priority. I was  
18 away camping in August -- which you see in the papers it is a  
19 yearly trip at that yearly time. I announced it well in  
20 advance of going away.

21 During this camping trip I engaged in a meet and  
22 confer, which accomplished absolutely nothing. The plaintiff  
23 didn't come to the table with one deposition date, and it went  
24 on for three hours.

25 So we are -- I -- I sometimes do feel we're going

1 through the motions. I do it. I approach it in good faith.  
2 I am optimistic; it's just my general nature.

3 And, to the extent issues can be narrowed, we will  
4 continue -- my clients will continue to work on that. Judge  
5 Hambrick, when she said, "Look, you've got to brief" -- there  
6 were a lot of outstanding discovery issues; she wanted a full  
7 record; she wasn't able to get the parties to break any bread  
8 or narrow any of the issues.

9 And I remain hopeful, once we get a response from the  
10 plaintiff, that maybe there is a way to take some of the  
11 issues off her plate. But she wanted to have a -- a full and  
12 complete record on it.

13 I think there's part of the motion that -- that the  
14 parties have made easy for you. We all agree that there are  
15 certain motion dates that should be adjusted. So there was  
16 agreement there. I wish we had reached it before we filed the  
17 motion.

18 But right now, because Judge Hambrick has asked us to  
19 brief a number of issues -- by way of example, there are some  
20 third parties locally in the Wyoming area, Black Hills Energy  
21 being one very important one. We issued a subpoena to  
22 Black Hills, and the plaintiff immediately filed a motion to  
23 quash before we could even serve the subpoena, so that is out  
24 there.

25 Plaintiff itself has issued at least 2 subpoenas --

1 they've issued over 20 subpoenas. Now, we didn't think, in  
2 all instances -- to legislative representatives and to  
3 numerous people. We -- we thought it was maybe an effort to  
4 intimidate some people from talking openly, a fishing  
5 expedition.

6           But if the plaintiff thought that there might be  
7 something there of relevance, we didn't rush in 20 times and  
8 file any motions to quash. We knew, at the end of the day,  
9 whatever was produced we would get the benefit of.

10           And so when -- when -- you know, they have subpoenaed  
11 Black Hills twice. We -- we have documents that we want from  
12 Black Hills that they did not request, so we're -- we're --  
13 it's incumbent upon us to get those. I'm facing a motion to  
14 quash. And, you know, that, to me, just -- for so many  
15 reasons -- is the type of thing that I think the Court finds  
16 frustrating.

17           So we -- we have a number of subpoenas outstanding.  
18 Obviously, once the motion to quash in these -- and these were  
19 filed right away -- it operates as a stay. My hands are tied.  
20 I'm -- I, frankly, was uncomfortable even calling Black Hills  
21 at that point, speaking to the general counsel and talking to  
22 a witness about what it is I wanted at the end of the day.

23           While I think that that might have been okay -- in  
24 this environment I've got three sanctions motions against me  
25 for what is totally frivolous; I've got a motion to revoke my

1 pro hac vice. So I'm not talking -- you know, if there's a  
2 motion to quash, I'm not even looking in the direction of  
3 Black Hills at this point.

4 Obviously, plaintiff knows these motions have to get  
5 reported to general counsels of firms and, you know -- and --  
6 and I say that. I'm -- you know, at some point the Court will  
7 look at them, and I'm -- I'm -- I'm not nervous about the  
8 result in them, but it does stymie someone's ability to go and  
9 talk to witnesses locally.

10 And so that -- that, in part, is what's happened  
11 here. We have important outstanding discovery, and it's all  
12 been subject of a motion.

13 I will write to plaintiff's counsel and say "Do you  
14 represent Potential Witness Bryce Fincham?" My request goes  
15 into a black hole. I subpoena the witness, properly serve  
16 him. The minute that I serve, I get a letter, "Oh, please  
17 don't have any contact. Plaintiff is now -- plaintiff's  
18 counsel -- is now representing him."

19 So we have -- I mean, these are just some  
20 illustrations.

21 There -- it -- it can't be that, because plaintiff's  
22 counsel files motions on all of my discovery and doesn't  
23 comply with their own discovery obligations and the Magistrate  
24 says "File your motion" -- because she wasn't able to decide  
25 instantaneously and asked for full briefing, which, by

1 definition, is -- you know, 14 plus 7 -- you know, it -- it's  
2 close to a month -- that, somehow -- and this is what  
3 plaintiff's counsel's position is -- that, "Well, the Judge  
4 didn't decide it in time and you're out of luck."

5 And I don't believe that's the law. It's not,  
6 certainly, what the Magistrate Judge intended when she asked  
7 us to, you know, submit motions.

8 So I think that -- we're not asking for any  
9 adjustment of the trial date. Our trial witnesses -- you  
10 know, we've -- we've -- we -- we will be ready to go on the  
11 27th. I will be there in your courtroom on the 10th, and  
12 there needs to be some recognition.

13 Let me give you one last illustration of the type of  
14 gamesmanship that -- plaintiff's initial disclosures in this  
15 case identified many people -- but, certainly, three  
16 individuals who were the founding members of BCB -- and it  
17 instructed us to contact them through plaintiff's counsel, not  
18 an extraordinary-type thing.

19 I started sending letters in July. I was the party  
20 that tried to set up a deposition schedule, not -- not any  
21 other defendant, not the plaintiff. I wrote numerous times  
22 and said "Here's my list; this is going to be a heavy lift for  
23 all of us; we need an all-hands call to establish a schedule."  
24 I started this process in July.

25 A couple weeks ago, we're -- we're having an informal

1 discovery conference with Magistrate Judge Hambrick where  
2 she's asked us "Identify the witnesses; identify who controls  
3 them."

4 We show up on a Friday. I give my list, as she  
5 instructed; we have a conference with her on Monday. Between  
6 that Friday and Monday, when we had our conference, the  
7 plaintiff in this case eliminated two of the witnesses from  
8 their website over the weekend and showed up on Monday --  
9 after 18 months of representing that they controlled the  
10 witnesses, that the witnesses were founders, and that I could  
11 only have contact with those witnesses through plaintiff's  
12 counsel, he announced for the first time "I don't control  
13 them; I can't get them to a deposition; you'll have to  
14 subpoena them." And so these are the types of things that we  
15 faced that require some additional time.

16 I think the schedule permits it. I think, given our  
17 efforts to take the depositions and secure the documents and  
18 complying with Magistrate Judge Hambrick, that it's  
19 appropriate that the discovery end date be adjusted to  
20 accommodate these types of things.

21 I'm not going to get into tit-for-tat in the motion  
22 papers. I don't think it will benefit the Court. I'm not  
23 someone who engages in mudslinging and things of that sort.

24 I would mention one last thing that -- that supports  
25 good cause here to make the requested adjustments, and it's --

1 it's another instance of pure gamesmanship.

2 We served our document requests at the beginning of  
3 the year, and the documents were required to be produced to  
4 the MineOne defendants in February of this year.

5 They were produced -- they were not produced in  
6 proper format. We went back and forth. The documents were  
7 finally produced in May of this year, and, at that time, they  
8 produced -- I think it was -- about 20- or 30,000 pages of  
9 documents. I want to get you the -- the precise number.

10 But, in any event, there were major, major gaps,  
11 things like text messages and the equivalent that the parties  
12 on this project used.

13 On Friday, August 16th -- one day and one month  
14 before the discovery deadline -- and on Monday, August 26th,  
15 while I was on vacation, the plaintiff in this matter did a  
16 data dump on the defendants and produced more than  
17 30,000 pages, more than they had produced in February when  
18 they were required to produce the documents.

19 They waited until the end of the day for the key  
20 documents and dumped 30,000 pages, which we are still  
21 feverishly trying to go through. Those 30,000 should have  
22 been produced in February, and they just -- with no notice --  
23 dumped -- we had been complaining about major categories that  
24 were missing, but their -- their August -- a month out from  
25 the discovery deadline -- dwarfed what they had produced in

1 February.

2 Now, we -- my clients have done 19 separate -- if we  
3 find documents, they -- they pressed for additional documents.  
4 We produced. We had a professional vendor come in and take  
5 all of the emails, collect from -- my clients did not go and  
6 pick what was going to be produced. All of their devices were  
7 collected, and they didn't sit at a computer and -- and pick  
8 and choose.

9 The point is that, less than 30 days before the  
10 discovery deadline, the plaintiff produced more documents than  
11 it had at the date it was supposed to produce in February with  
12 little explanation as to how this could even possibly be.

13 And so with items like that, it's just totally  
14 prejudicial to my clients to have this dumped -- and then they  
15 still want to, you know, do depositions -- which we are  
16 amenable and -- and tried to work out dates with them.

17 But it's an injustice and it creates tremendous  
18 prejudice. If there are internal adjustments to the schedule  
19 here, there is no prejudice whatsoever to the plaintiff.

20 And they actually try to mete out -- you know,  
21 they -- they complain about a lot of things they -- they say  
22 we didn't produce. I can answer all of them. They'll be  
23 addressed before Judge Hambrick. But they, too, are -- are  
24 complaining about documents but don't want to do any internal  
25 adjustments to the schedule.

1                   And so the defendants -- you know, there has been bad  
2 faith and -- you know, we're just -- we're just -- don't talk  
3 in the same type of hyperbole when we file our motions, and we  
4 don't, as a matter of course, every motion, couple it with  
5 sanctions.

6                   And so, Your Honor, good cause exists. There would  
7 be tremendous injustice and prejudice if we are not able to  
8 get the discovery because the plaintiff has filed motions  
9 which operate as a stay and try to prevent us from getting  
10 what we need.

11                  I appreciate the Court's time.

12                  THE COURT: Thank you.

13                  As I understand it, the dates, then, have been -- the  
14 parties do agree to the extension of the dates.

15                  MS. COLBATH: Well, Mr. Murphy objects to me getting  
16 any of the discovery that is the subject of the pending  
17 motions. And I think that's where the biggest issue is.

18                  THE COURT: And -- and then -- tell me, what are the  
19 most important areas that you wish to go into at this point?

20                  MS. COLBATH: So there are -- there are a few.

21                  So Black Hills -- Your Honor in your opening remarks  
22 said that BCB had the good fortune to access substantial power  
23 resources and et cetera.

24                  And so, obviously, that power contract is a central  
25 point, and how BCB came to secure it is important. And there

1 was an RFP process, and I have interviewed other competitors  
2 who also submitted RFPs. And the way -- BCB won that RFP  
3 because they were the -- the bidder who actually agreed to pay  
4 the highest price for the electricity.

5 Something that -- before my clients entered into the  
6 contract that's at issue here, we said "That's a no-go  
7 contract. That price -- you agreed in that contract, BCB,  
8 that you would pay at least 5 cents." And my client --  
9 5 cents is a cap in the industry. You generally want, you  
10 know, 4 1/4 -- you know -- I don't want to get too technical  
11 with it. But we would not have done this deal if we had not  
12 been able to amend that contract. Okay?

13 And that contract that was secured required BCB to  
14 escrow and post security of \$11 million. They didn't have the  
15 financial wherewithal to do that.

16 So while the Court puts a great value on the  
17 contract, they were unable to perform it. They had -- you  
18 know, and so the financial aspect is I'm trying to identify  
19 what type of capitalization did they have at the time,  
20 significantly less from what I can tell --

21 THE COURT: Okay. Now, this -- this is  
22 capitalization you're talking about from BCB?

23 MS. COLBATH: This is BCB. So --

24 THE COURT: So let's --

25 MS. COLBATH: -- Black Hills, as -- Black Hills, as

1 part of the RFP process, you need to satisfy them that you  
2 have the financial wherewithal to be able to build the  
3 facility and to support the contract.

4                   The initial contract between BCB and the power  
5 company here, Black Hills Energy, had a provision that BCB was  
6 required to post -- it could be a letter of credit, cash  
7 collateral, something -- but the security was --

8                   THE COURT: But Mr. -- Mr. Murphy doesn't want you to  
9 have the contract? Is that where you are?

10                  MS. COLBATH: I'm not sure.

11                  But, in any event --

12                  THE COURT: Well, what's --

13                  MS. COLBATH: -- this is some of the discovery that  
14 we're seeking.

15                  THE COURT: What's -- okay. You -- you want to  
16 subpoena documents from Black Hills; right?

17                  MS. COLBATH: Black Hills and the investors in BCB.  
18 So that I can ascertain what type of capitalization BCB had  
19 when it told Black Hills, in order to secure the contract,  
20 that it could build the facility.

21                  It hadn't met my clients. I'd like to know whether  
22 what it said to Black Hills to secure the contract was true.  
23 I don't think it was. I don't think that they had a -- a dime  
24 in the bank at that point. I think, ultimately, at some point  
25 they raised about 3 million.

1           But, also, a month before they walked off this job in  
2 March of 2023, that 3 million left their bank account. It's  
3 kind of classic, making yourself judgment proof.

4           They have told the Court repeatedly they don't have  
5 any money and they don't have a bond and -- and so -- "Well,  
6 why did you return, without any consideration, the money that  
7 you had in the bank?" So there are financial issues.

8           There's a third. I -- just to keep you like --  
9 there's so many on the financial aspects.

10           But jurisdiction was a major thing, as we all know.  
11 A couple of months ago, when I'm asking about taking the  
12 deposition of a gentleman who I believe put in a million  
13 dollars -- although they're totally -- they refuse to produce  
14 anything on their finances. My clients have been tipped  
15 upside down. Every communication relating to a dollar that  
16 they -- that they had invested or paid for a supply has been  
17 produced.

18           I received a letter about this particular witness  
19 that I was pursuing, and Mr. Murphy writes -- excuse me.

20           BCB counsel writes that, "Well, we made a mistake and  
21 he wasn't a member on this date, and he signed this document,  
22 and it said something as of, and he did Series A and not  
23 Series" -- I mean, it was like -- I couldn't follow the  
24 letter.

25           Just give me the documents underlying it. You're now

1 claiming that someone who -- and they've never corrected their  
2 corporate disclosure on this. But he wrote a letter.

3 So there are all kinds of issues relating to the  
4 finances. And -- and it goes right to did they improperly  
5 secure the initial contract. Did they have -- once they got  
6 the contract, could they have ever fulfilled it? I mean, part  
7 of -- part of the first amendment was you have to do certain  
8 things within 45 days. They had no ability to do it. They  
9 needed an extension of that 45 days.

10 So -- so let's talk about the witnesses. The  
11 documents -- there's a long list of them. And that's fully --  
12 fully briefed.

13 THE COURT: Well, I don't -- I don't quite understand  
14 at this point.

15 You've indicated that you need documents from  
16 Black Hills.

17 MS. COLBATH: That's one -- that's one party that was  
18 subpoenaed.

19 THE COURT: Okay. And what are you going to do to  
20 get those? Or can you get them?

21 MS. COLBATH: I --

22 THE COURT: What does Mr. --

23 MS. COLBATH: So -- so --

24 THE COURT: What -- what are you frustrated about  
25 that?

1 MS. COLBATH: Yes.

2 So plaintiff's counsel subpoenaed them twice;  
3 I didn't jump up and down. When I subpoenaed them, I was met  
4 immediately -- I did -- I followed the local rules, give  
5 plaintiff notice of your intention to serve.

6 Before -- the next day, before I got to Black Hills  
7 with serving the subpoena, I was met with a motion to quash.  
8 I'm not entitled to any documents from Black Hills. None.  
9 Zero. No meet and confer. A motion -- the motion under the  
10 rules that operates as a stay.

11 So, Your Honor, my -- both my hands are handcuffed  
12 behind my back right now.

13 I issued subpoenas. They've objected entirely to  
14 every subpoena and every witness that -- that I subpoenaed.

15 The -- the Magistrate Judge -- because we had so many  
16 issues with Desrochers, who was a member -- he was the one  
17 party, as the Court will recall, that was creating the subject  
18 matter jurisdiction issue.

19 Ultimately, we hired process servers, two different  
20 companies; we ultimately hired a private investigator. We had  
21 people parked -- he never appeared, you know, at that Colorado  
22 address. Judge Rankin finally said "I'm just going to -- if  
23 Mr. Murphy's representing him, you can serve him by email."

24 When we had a meeting, an informal discovery  
25 conference with Magistrate Judge Hambrick -- when I learned

1 suddenly overnight people were removed from the website;  
2 they're no longer under the control, even though they're  
3 founders and members -- I said, "Okay. I anticipate I'm going  
4 to have trouble serving these individuals now." And she made  
5 plaintiff's counsel represent on the record that he wouldn't  
6 interfere with the service.

7 I could tell you we know where people live. When  
8 they don't show up to their primary residence for two weeks,  
9 the three individuals, something has happened. And they have  
10 interfered.

11 So we have a motion pending before -- it's the  
12 discovery motion. We have one large discovery motion before  
13 Judge Hambrick, asking her -- we're facing a repeat of -- of  
14 the same thing that happened with a prior witness. We would  
15 like to be able to serve them by email.

16 These are people that, until two weeks ago, were  
17 listed as founders and -- and I could only contact them  
18 through plaintiff's counsel. One of the individuals is --

19 THE COURT: Let me tell you --

20 MS. COLBATH: -- Mr. Murphy's son.

21 THE COURT: -- all of this seems very scattered  
22 to me.

23 MS. COLBATH: It is because -- because -- I'm trying  
24 to give you illustrations. This is all fully briefed before  
25 Judge Hambrick.

1                   There are 20 categories of documents that the  
2 plaintiff has refused to produce. She said "Give them to me;  
3 I'll decide it."

4                   There are witnesses that suddenly no longer go to  
5 their regular homes at night. We've asked her "Please let us  
6 serve them by email."

7                   And these are people that I would have subpoenaed in  
8 August except -- they were on my witness list to -- to  
9 plaintiff's counsel.

10                  THE COURT: Okay. These -- these --

11                  MS. COLBATH: So there is -- it is scattered.

12                  THE COURT: These people are the ones you're talking  
13 about that the -- BCB says are merely investors? And the  
14 reason you want them is because of what you referred to in  
15 terms of the RFP; right?

16                  MS. COLBATH: No. No.

17                  So -- so there's Black Hills, and that's the RFP.  
18 But the RFP has financial aspects to it. Okay?

19                  Then you have BCB and its ability to build the  
20 project as it represented it could do. Okay? And so the  
21 investors are important for that.

22                  Then Bryce Fincham -- suddenly it creates  
23 jurisdictional issues. And we just got a letter that's --  
24 that's like -- I mean, it -- it's cryptic. And so I had  
25 already determined that I wanted his deposition. Okay?

1                   And then you have BCB telling you at the evidentiary  
2 hearing -- Mr. Michael Murphy -- "I lost my entire life  
3 savings with this project; all of us did; my entire team lost  
4 everything."

5                   Well, that -- I -- you know, that makes someone --  
6 that was an emotional appeal, and I'm allowed to test that and  
7 determine whether it's true. So there are -- there's -- the  
8 finances have multiple -- multiple relevance here.

9                   And so a Bryce Fincham, who was subpoenaed and  
10 served, contributes, you know, certain aspects for the case.  
11 Others contribute something different.

12                  But the finances and -- and BCB gutting itself of  
13 every dime less than one month before it walked off the job  
14 needs an explanation because I've got substantial  
15 counterclaims.

16                  And it app- -- and we put in that we thought that  
17 this might be an alter ego situation. And, if they don't have  
18 a good reason for returning every dime that -- that we've been  
19 able to identify that they have -- upwards of 3.2 million --  
20 all these investors are much more significant. So there's the  
21 investor bucket.

22                  There are three people who are not investors. That  
23 would be Steve Randall, who came on as a project manager;  
24 Neil Phippen, who was supposed to be on the site on a daily  
25 basis as a founder; and Sean -- Sean Murphy, who took on some

1 roles at the end of the day.

2 So those three are -- are -- who was running the  
3 show? Why wasn't things -- why weren't things getting done?  
4 What were the delays?

5 BCB says it was that -- you know, they point the  
6 finger at all of the contractors. I've spoken with many of  
7 the contractors. They tell a completely different story about  
8 what the problem was.

9 So there are -- there are three people who were  
10 there, responsible, connected to BCB, hired by BCB, members of  
11 BCB, and -- and so those are the three that we're subpoenaing.

12 THE COURT: Now --

13 MS. COLBATH: Then -- then --

14 THE COURT: -- is all --

15 MS. COLBATH: -- let me raise one other --

16 THE COURT: -- is all of this --

17 MS. COLBATH: -- let me raise one other --

18 THE COURT: Okay. Go ahead.

19 MS. COLBATH: No, no. Your Honor, you -- you go.

20 I didn't realize you . . .

21 THE COURT: I'm just wondering. Is all of this  
22 before a Magistrate at this point?

23 MS. COLBATH: All of these outstanding discovery  
24 issues are briefed and ready -- well, there may be some papers  
25 that -- that plaintiff still needs to put in. But the -- my

1 motion on everything that we -- that I've mentioned to you is  
2 totally briefed to her, at her request. So she -- she's fully  
3 informed about all of these items.

4 THE COURT: Okay.

5 Let me ask if there's something that, locally, we  
6 could do -- depending on her rulings in those regards -- such  
7 as requiring all the parties to gather at particular  
8 locations, particular times, right here in the courthouse, and  
9 we'll supervise all of the depositions that you need and --  
10 and require --

11 MS. COLBATH: I think that's --

12 THE COURT: -- require the plaintiff to --

13 MS. COLBATH: -- that's a --

14 THE COURT: -- produce, you know, those founders  
15 and -- and -- here at a given day.

16 Would that help?

17 MS. COLBATH: I totally endorse that, Your Honor.

18 I had wanted the depositions in person, in Wyoming,  
19 and said "I will bring my client to your office, Mr. Murphy,  
20 so that it can take place and, if there's any issues, we have  
21 access. And you can hand him the documents and he can -- it's  
22 not on a screen" -- but that was rejected.

23 And so we ultimately defaulted -- because I just  
24 wanted to -- to make things smooth. I capitulated and I said  
25 "Let's just do it by Zoom."

1           I -- I wanted it -- I was ready to bring and -- do  
2 everyone right there in Wyoming. So we're on the same  
3 wavelength in that regard.

4           And you want to set a two-week, three-week period  
5 where, you know, witnesses -- every day someone comes in,  
6 I'm -- I'm ready to do that.

7           MR. MURPHY: Your Honor, when the time is right, may  
8 I be heard.

9           THE COURT: Sure.

10           MR. MURPHY: Okay. Whenever -- you tell me when  
11 you're ready.

12           THE COURT: I'm -- I'm, of course, here.

13           MR. MURPHY: Okay. All right.

14           If it please the Court, Ms. Colbath, and all counsel.

15           Let -- let's just back up for a moment and get the  
16 context. Everyone agrees the Court should keep the  
17 January 7th trial date. We all know it's a bench trial for  
18 two weeks. There has to be an end to this contentious  
19 lawsuit, and it can't come soon enough.

20           Equally important, there has to be an end to the  
21 discovery. The Court has already granted the defendants' four  
22 extensions to the discovery and expert witness designation  
23 cutoff deadlines.

24           The Court first granted extensions of the  
25 jurisdictional discovery deadline for MineOne to receive

1 Tim Desrochers' 1,400 pages of records and take  
2 Mr. Desrochers' deposition on -- on April 22nd.

3 The Court next extended the discovery cutoff from  
4 August 7th to September 17th at MineOne's request. The Court  
5 next extended the defendants' deadline to designate their  
6 expert witnesses. And the Court then again extended the  
7 deposition discovery cutoff from September 17 to September the  
8 30th.

9 No further grace or -- or extension should be granted  
10 by the Court. Instead, the only extensions that should be  
11 granted are the agreed extensions to the briefing deadlines  
12 that both of us have submitted in our briefing.

13 MineOne agreed this month that it will conduct the  
14 depositions of the witnesses it identified in its September 4  
15 letter to Judge Hambrick and to all counsel by September 30th.

16 And, after sending its list of nearly 20 people it  
17 wanted to depose to Judge Hambrick and counsel on  
18 September 4th and not listing JWJ Technology or Bitmain on  
19 that list, Mine- -- here's how MineOne has spent its  
20 September time: The only deposition it took was of BCB's  
21 damages expert, Patrick Gahan, on September 17th; it scheduled  
22 the deposition of BCB's member and cofounder, Emory Patterson,  
23 on Monday morning, September 30th, which will happen; and it  
24 has chased after people that were not on its September 4  
25 list -- Bitmain Georgia witness and JWJ Technology witness --

1 with very untimely subpoenas; and, now, it is refusing to take  
2 Sean Murphy's deposition on the September 30 deposition  
3 discovery deadline because Ms. Colbath says she is too busy.

4 None of this warrants yet another extension of the  
5 September 17 document discovery cutoff or the September 30  
6 deposition discovery cutoff.

7 Mine- -- in -- in their moving papers on the motion  
8 that we're here to talk about today, Judge Johnson, this is  
9 what MineOne wrote: "MineOne will conduct the depositions of  
10 witnesses that have been identified by the Court's  
11 September 30, 2024, deadline," and that's at ECF 344 at  
12 page 4, and that's what should happen, Your Honor. MineOne  
13 should not be given any further grace or extensions to take  
14 any depositions after that September 30 deadline.

15 And the reason is this: These delays are on MineOne.  
16 They're not on BCB. The delays of conducting depositions in  
17 July, August, and September are MineOne's fault and doing and  
18 should not be saddled on BCB. BCB should not have to suffer  
19 yet another extension because, A, MineOne's key witness,  
20 Erick Rengifo, was on a month-long vacation in August;  
21 MineOne's counsel, Ms. Colbath, was on a 12-day vacation from  
22 August 23 to September 4 and wouldn't allow the rest of us to  
23 do any depositions without her being present; and MineOne has  
24 been hiding and protecting its four important Chinese  
25 witnesses -- Jiaming Li, Chong Wang, Huaili Zhang, and

1 Haku Du -- from giving their depositions in August or  
2 September; and MineOne has been preoccupied with chasing after  
3 irrelevant depositions of BCB's investor and members of  
4 members instead of taking the depositions of these important  
5 witnesses.

6 And they've been filing incredibly untimely subpoenas  
7 requiring testimony and documents on third parties  
8 JWJ Technology and Bitmain Georgia this month but not  
9 producing their important witnesses for their depositions.

10 And -- and this is important: MineOne's counsel  
11 volunteered to Judge Hambrick that MineOne would subpoena  
12 Stephen Randall and Neil Phippen for depositions in September.  
13 But now they seek yet another extension to depose them when  
14 MineOne did not serve them with their deposition subpoenas.

15 And MineOne untimely served Bitmain with numerous  
16 written discovery requests on September 12, all at -- nearly  
17 all of which -- such as Bitmain's CFIUS communications,  
18 Bitmain's communications with Huaili Zhang and JWJ Technology,  
19 and Bitmain's communications concerning BCB and these  
20 facilities -- should have been served in July or August.

21 BCB has made Michael Murphy, Emory Patterson, and  
22 Sean Murphy available for MineOne to depose, with Emory  
23 Patterson and Sean Murphy on Monday, September 30, but MineOne  
24 is deposing only Emory Patterson that day, now saying it is  
25 too busy to depose Sean Murphy. And MineOne has told us that

1 they don't want to depose my oldest son, Michael Murphy.

2 BCB made its managing agents, the keymen, available  
3 for their depositions but MineOne has not. They've hidden  
4 their people.

5 Let me tell you -- let's talk about Sean Murphy.

6 Sean Murphy is my second son. And I absolutely  
7 reject any notion that we all gather together in the  
8 courthouse in October for more depositions when we need to be  
9 briefing the dispositive motions.

10 Here's why you shouldn't do that -- or not even think  
11 of it: Sean Murphy has been available to be deposed nearly  
12 all of 2024. He was available back in December of '23 and  
13 January of '24 when BCB first began trying to schedule  
14 depositions with MineOne.

15 Sean Murphy was available this July and August when  
16 I was trying so hard to schedule and coordinate depositions  
17 with MineOne. All you have to do is look at my July 15th  
18 letter to all the other counsel, which I attached as our  
19 response to the motion we're here about today.

20 And Sean Murphy was available at the end of August  
21 when Ms. Colbath went on her 12-day vacation and wouldn't do  
22 any depositions.

23 And MineOne apparently tried to serve Sean Murphy in  
24 Cheyenne at his town house there, but Sean was with his son in  
25 Colorado and traveling in September. His son -- and my

1 grandson -- is very sick. And, given everything going on with  
2 his tenuous health situation, after we were all together as a  
3 family on September 16th, Sean traveled to South Carolina to  
4 be with his palliative care and hospice mentor about  
5 everything that was going on because -- Sean is a 15-year  
6 hospice volunteer in the VA, but, even with all his palliative  
7 care and end-of-life care, he is mightily challenged being a  
8 palliative father for his son's progressing brain disease.

9                   And when Sean got back to Wyoming and heard that  
10 MineOne and Ms. Colbath were wanting to depose him, he reached  
11 back to Ms. Colbath and made himself available for a  
12 deposition on the discovery deadline on September 30th.

13                   But Ms. Colbath declined to schedule Sean's  
14 deposition that day, instead hoping the Court will now grant  
15 MineOne yet another extension, yet another grace to depose  
16 him, but they should not have any more graces or extensions.  
17 These extensions are burying BCB. We are already under great  
18 stress and burden, both personally with Sean's son and with  
19 our family members involved in this incredibly contentious  
20 lawsuit.

21                   And, you know, I agree with you. Enough is enough.  
22 MineOne has had a full year to schedule and do its  
23 depositions. This Court has bent over backward and given  
24 multiple extensions. And Sean is another example of why the  
25 Court should keep the September 30 discovery deposition

1 deadline that Judge Hambrick, with your leave, Judge Johnson,  
2 granted a couple of weeks ago and should not grant another  
3 deposition extension.

4 I want to talk to you about the other two people they  
5 mentioned about wanting to do depositions of, Neil Phippen and  
6 Stephen Randall. And those are in addition to Sean Murphy.

7 The Court should not allow MineOne to take  
8 depositions of Neil Phippen or Neil -- Neil Phippen or Stephen  
9 Randall after the September 30 deposition discovery deadline.

10 MineOne's counsel volunteered on September 9th to  
11 Judge Hambrick to subpoena Mr. Randall and Mr. Phippen for  
12 their depositions later this month, and MineOne has not  
13 achieved service on either Mr. Phippen or Mr. Randall at their  
14 Denver and Phoenix homes the last 15 days.

15 MineOne should especially not be allowed to depose  
16 Mr. Phippen and Randall after the September 30 deposition  
17 discovery cutoff where, as here, MineOne never sought to  
18 depose Phippen or Randall before September.

19 MineOne is simultaneously hiding and protecting its  
20 four most important witnesses -- Li, Du, Zhang, and Wang --  
21 from giving any deposition in September, even though all of  
22 those people are owners or employees of MineOne.

23 Importantly, Stephen Randall is a for- -- Stephen  
24 Randall is a former, not current, employee of BCB who worked  
25 at the North Range site until March of 2023 but who is not a

1 member of BCB, was never a founder of BCB, and who has not  
2 been involved with BCB management since this case was filed in  
3 May of '03 -- or '23 -- and who was never a managing agent of  
4 BCB. And BCB has no control over Steve Randall, and,  
5 therefore, cannot voluntarily produce him for his deposition.  
6 I don't know where he is.

7 Neil Phippen is a member of BCB, but Mr. Phippen has  
8 largely withdrawn from any management of BCB since the lawsuit  
9 was filed in early 2023. He's, frankly, moved on with his  
10 life to provide for his family and left this lawsuit and BCB's  
11 only remaining business -- this lawsuit -- for Michael Murphy  
12 and Emory Patterson to handle.

13 Importantly, MineOne has not demonstrated the  
14 predicate facts to support any service of these Randall and  
15 Phippen deposition subpoenas by email. MineOne has not shown  
16 that either man is evading personal service of the September  
17 deposition subpoenas.

18 MineOne has not served Mr. Phippen at his Denver home  
19 or Mr. Randall at his Phoenix home the last two weeks, but it  
20 is more likely that these men are traveling and not present at  
21 their permanent homes than it is that they are avoiding or  
22 evading any service of MineOne's 11th-hour subpoenas.

23 And there is just, frankly, no cause or reason to  
24 further extend the September 30 deposition discovery cutoff  
25 for MineOne to depose these two men, who they should have

1 deposed during the last year. They should have taken their  
2 depositions long ago and chose not to.

3 Even if -- Your Honor, even if the Court were  
4 inclined to allow service of their deposition subpoenas by  
5 email in lieu of personal service, it is too late for MineOne  
6 to take these depositions. And even if the Court were further  
7 inclined to both extend the discovery cutoff to allow MineOne  
8 to take their depositions and allow service of their subpoenas  
9 by only email, MineOne must first show proof the recipient  
10 received, opened, and read the email so the recipient has  
11 actual notice he has been served.

12 MineOne bears the burden of proving that the  
13 recipient actually opened and read the email, and technology  
14 exists where you can show the recipient actually opened and  
15 read his email. Constructive notice of a subpoena being sent  
16 to a third person's email address is not actual notice of  
17 receipt and awareness of that subpoena under Rule 45.

18 I could talk about the -- the Bitmain subpoena that  
19 they served, incredibly, two days after BCB settled with  
20 Bitmain Georgia, but that's pending before the Court. That --  
21 that motion to quash has been filed. MineOne has -- or  
22 Bitmain. Not me. Bitmain filed that well-taken motion,  
23 MineOne responded last night, and Bitmain has a chance to  
24 reply to that. That one is not ripe.

25 But what Ms. Colbath spent most of her time talking

1 about was the subpoenas that she served on BCB's investor  
2 CMV Global and four members of member of BCB that are located  
3 in Illinois, Ohio, Tennessee, and Florida.

4                   And perhaps the Court is not fully aware of that, but  
5 Your Honor, Judge Johnson, has under advisement BCB's  
6 August 16th motion to quash MineOne's subpoenas to those  
7 Illinois, Ohio, Tennessee, and Florida investor and members.  
8 That has been fully briefed. I did supplemental briefing on  
9 that pursuant to Judge Hambrick's leave. MineOne has fully  
10 briefed that.

11                  And I think it was just -- it may have been this  
12 morning or yesterday that this Court unferred or  
13 rereferrered -- I don't know what the right words are -- that  
14 big motion to Your Honor and took that off of Judge Hambrick's  
15 plate.

16                  But the point of all of that briefing is that those  
17 requested depositions and document subpoenas are irrelevant,  
18 they're unnecessary, they're unduly burdensome, they're all  
19 fishing expeditions.

20                  And, if the Court were to even allow any of those  
21 meritless depositions to be taken or document subpoenas to be  
22 answered, it would adversely impact the three-week extensions  
23 all parties now agree should be granted for briefing the  
24 dispositive motions -- excuse me -- the dispositive motions.

25                  If MineOne were really serious about wanting to

1 depose BCB's investor and members of members, it should have  
2 sought those irrelevant depositions in January through July,  
3 not in August or September, and it is too late to go fishing  
4 for those irrelevant members. And the Court should never  
5 grant another extension for that.

6 And -- and, Judge Johnson, that -- we talked about --  
7 or Ms. Colbath talked about the Black Hills Energy document  
8 subpoena. That is all a part of the August 16th motion to  
9 quash those investor subpoenas and the BHE document subpoena.  
10 That has been fully briefed by both parties. Your Honor has  
11 that under advisement now -- I think as of today or  
12 yesterday -- not Judge Hambrick.

13 And some curious things about the Black Hills Energy  
14 situation and the investors.

15 With respect to the investors, MineOne's funding was  
16 a contractual obligation of MineOne. BCB had no contractual  
17 obligations for funding involving Black Hills power. Our  
18 funding, BCB's funding, is simply not an issue. The only  
19 funding that is at issue is MineOne's funding.

20 And when I sent, back in December of '23, a subpoena  
21 to Black Hills Energy to submit the 15 different requests for  
22 proposals that Black Hills Energy received from all of the  
23 people vying for that electrical power -- which is, arguably,  
24 worth about \$150 million to Black Hills Energy over a  
25 five-year period -- guess who objected to any of those

1 15 requests for proposal being produced. That would be  
2 MineOne.

3 They filed their objection to it, and I agreed with  
4 their objection, and I no longer pursued any of the  
5 15 requests for proposal.

6 And now, last month, we see MineOne has changed its  
7 colors. Now MineOne says, "Oh, oh, the -- the -- BCB's  
8 request for proposal to Black Hills Energy is suddenly  
9 relevant" when it hasn't been relevant for the last 10 months.

10 And the truth is it isn't relevant and it hasn't been  
11 relevant and discovery with respect to it would just unduly  
12 burden some more people and lump more cost on the most  
13 contentious lawsuit I've ever heard of and ever hope to  
14 hear of.

15 The . . . so I think we can say this to summarize:  
16 The Court has before it the investor -- MineOne's investor  
17 subpoena to CMV Global; it has under advisement and fully  
18 briefed the four members of member that live -- those  
19 gentlemen live in the four states I mentioned earlier, Ohio,  
20 Illinois, Tennessee, and Florida. It has under advisement,  
21 fully baked out, the reasons why it should quash the -- the  
22 subpoena to Black Hills Energy.

23 I've reviewed with Your Honor the three big  
24 depositions -- the fact witness depositions -- that MineOne  
25 suddenly wants to take in September but never wanted to take

1 or sought to take when they should have, the past year while  
2 discovery was running.

3 I shared with you why Sean Murphy has made himself  
4 available to be deposed on September 30, but that invitation  
5 has not been accepted by defense counsel.

6 And I shared with you why Randall and Neil Phippen --  
7 the Court should not allow service of deposition subpoenas on  
8 them by email and it certainly should not allow them to be  
9 deposed after the September 30 deposition deadline.

10 I feel like it's déjà vu all over again. I felt like  
11 I had this conversation with Judge Hambrick two weeks ago.  
12 And Judge Hambrick advised all of us on the call today that  
13 she had reached out to Your Honor and that Your Honor had said  
14 it would be okay if she extended the deposition discovery  
15 cutoff from September 17th to September 30th and that's -- and  
16 she did that.

17 But she also advised us that she would not -- she did  
18 not have Your Honor's leave to extend the September 17th  
19 document discovery cutoff, and she left that in place.

20 And then what happened thereafter is that MineOne  
21 wrote to all of us, saying it would take its depositions by  
22 September 30th and now -- and it recognized the September 17th  
23 discovery cutoff for document production, and it agreed with  
24 the extensions of the briefing deadlines.

25 But now, today, I'm hearing them say they want to

1 undo both of those discovery deadlines and just keep them  
2 going into October in addition to having extensions of time on  
3 the briefing deadlines.

4 It's too burdensome. It's too costly. I cannot do  
5 all of this. I cannot keep doing all of these depositions on  
6 and on and on and then be expected to do a good job, like  
7 I want to do, with all of the dispositive motion briefing.

8 The depositions of the important people should have  
9 been taken by September 30th. They weren't, through no fault  
10 of BCB, through entirely MineOne's fault.

11 And the depositions of the unneeded people -- like  
12 the members of member, the investor, and, certainly, the  
13 Bitmain Georgia -- they want to go depose Bitmain Georgia  
14 about our settlement. They want us to produce our settlement  
15 agreement -- all my negotiations with the -- the Bitmain  
16 lawyers leading up to that -- and about 15 categories of  
17 documents that, frankly, are -- are insanely irrelevant and  
18 should have been requested months ago.

19 All the while -- all the while, MineOne won't produce  
20 one of its CFIUS communications at all. Remember how BCB --  
21 or how MineOne was telling you months ago that -- blaming BCB  
22 for not getting with CFIUS and not getting their prior  
23 approval and all of that?

24 Well, now MineOne won't produce any of its CFIUS  
25 communications, won't produce any of its Antalpa

1 communications, won't produce any of its CleanSpark  
2 communications, won't produce any of its Republic Title of  
3 Texas documents, and, yet, they want to extend the discovery  
4 cutoff to hammer on all of our people.

5 Your Honor, to close, the Court knows we're going to  
6 have heavy dispositive motion briefing. But MineOne wants to  
7 jam BCB so badly at -- when we were already consumed with  
8 stress, burdensome costs, and fishing expeditions -- so  
9 I can't focus my time and BCB's time on the dispositive motion  
10 briefing.

11 Any further extensions only help MineOne cure its  
12 delay after delay after delay, and they burden BCB with more  
13 cost, more time delays, more difficulties. Don't -- please  
14 don't give MineOne yet another grace -- and that's what I call  
15 it, and I don't choose that word lightly but another grace --  
16 especially since MineOne is at fault for the predicament it  
17 put itself in by not doing the needed discovery when it should  
18 have done. Don't give them more days, more subpoenas, and  
19 more depositions to impose themselves on BCB when I need to be  
20 briefing to Your Honor.

21 Thank you, Judge Johnson.

22 MR. GOTTLIEB: Your Honor, may I be heard on this.

23 THE COURT: Sure. Absolutely, Mr. Gottlieb.

24 MR. GOTTLIEB: I don't have as much skin in the game  
25 as -- as MineOne, but I am part of this, and I'm -- we're sort

1 of working with MineOne because we're both defendants and we  
2 have a commonality on certain issues.

3           But I've been a part of these meet and confers. And  
4 I will say this: Mr. Murphy talks a very good game. He's  
5 extremely polite, he's extremely soft-spoken, and he gives you  
6 the impression that he's the victim here of everything, that  
7 everything we've tried to do in this case is all wrong and  
8 everything he's done is right.

9           It's just a gamesmanship all the way through. And  
10 I'll give you the best example of this.

11           Judge Hambrick asked us to meet and confer -- she  
12 directed us to meet and confer on some of these issues, and we  
13 tried to do that.

14           And when we got on the phone with all the counsel,  
15 Michael Murphy, Patrick Murphy's son, he took the lead on the  
16 meet and confer, which was completely improper. I objected to  
17 it. I told Patrick Murphy this is inappropriate, Paula  
18 Colbath told him this is inappropriate, and he wouldn't let it  
19 go. He wouldn't stop.

20           Michael Murphy conducted the entire meet and confer.  
21 And when we were trying to get dates for depositions, it was  
22 virtually impossible.

23           What Patrick doesn't tell you is the fact that when  
24 we tried to schedule depositions of certain principals of  
25 BCB -- including Mr. Emory, who Ms. Colbath was trying to

1 depose since July and couldn't get any response, now we're  
2 down to two weeks left to get this done in August -- less than  
3 that, actually -- and we were told that he wasn't going to  
4 produce his individual clients until -- and unless -- until we  
5 did -- we agreed to produce Mr. Li.

6 By the way, MineOne never refused to produce Mr. Li.  
7 They told him that they can't produce him for legal reasons  
8 because he's in China. And until he gets his passport back  
9 and can go to another state, another -- another country where  
10 he can be deposed, we would -- he would be deposed at that  
11 point in time. It was not a refusal. It was the law. And  
12 it's unfortunate.

13 But Mr. Murphy said, "Well, we're not going to  
14 produce our -- we're not going to produce our witnesses, then,  
15 until you get him on the calendar."

16 And then when we asked when Mr. Murphy would be  
17 available, Michael Murphy, his response was "I have to ask my  
18 father when I'm available," which is incredible.

19 So Mr. -- Mr. Murphy waited until very recently to  
20 serve all of these myriad demands -- or his responses. Like  
21 Ms. Colbath said, 30,000 pages of documents. It's no wonder  
22 that depositions weren't done until all those documents were  
23 produced.

24 Mr. Murphy never responded to you in his reply today  
25 about his having delivered 30,000 new pages of documents at

1 the very last minute. And then he wonders why depositions  
2 couldn't be held until recently.

3 By the way, we're all trying to get to the same  
4 result. We just want a fair -- a fair process. It's -- it's  
5 unbelievable to think that all these deposition subpoenas are  
6 going out and nobody could be reached and that Mr. Murphy has  
7 nothing to do with any of this.

8 This is what happened with -- with Mr. Desrochers  
9 when they tried to serve him. There is interference going on  
10 behind the scenes.

11 Another good example of this -- and it's one that we  
12 should get to eventually -- is his expert report. We finally  
13 got his expert report. And when we go to depose their  
14 expert -- remember, we only have one shot at this -- the  
15 expert testified that all his numbers were wrong, that a whole  
16 new report has to be amended, that his damages went from  
17 42 million to 15 million, but he wasn't -- he wasn't able to  
18 testify on all the individual aspects of why that happened.

19 And now we -- we -- we'd want to get a new report.  
20 He's going to submit a brand-new report -- brand-new report --  
21 that we don't get to depose him on. This is all gamesmanship  
22 by Mr. Murphy, all of it.

23 And I know he speaks very well; he's very articulate.  
24 I mean, the home -- he's got a home field advantage here. But  
25 I've got to tell you -- I've been watching this thing from the

1 sidelines and participating where I need to and it's nonsense.

2 Plaintiff is -- is holding back on everything and  
3 making life difficult. He decides -- Mr. Murphy decides for  
4 himself what witnesses are relevant or not. He'll tell the  
5 Court whether they're relevant or not and what we can look  
6 into and what we can't look into and that's nonsense. He  
7 doesn't get to decide which witnesses are available to us and  
8 which aren't and which witnesses are relevant to the  
9 defendants' case. He doesn't get to do that. We get to try  
10 our own case.

11 And, by the way, when we asked him if we could extend  
12 the deadline for getting depositions without moving the trial  
13 date at all where there would be no prejudice to anybody, no  
14 prejudice -- it's not costing any more money to move  
15 depositions back a few weeks or to get some additional time to  
16 review things; there's no prejudice to plaintiff -- he just  
17 wants to make this as hard for us as possible.

18 And I haven't seen any good faith effort to  
19 cooperate. On every meet and confer it's always "No." When  
20 I asked Mr. Murphy "Can you tell me what prejudice you're  
21 going to suffer if we were to move the deposition dates back  
22 and the dispositive motion dates back by a little bit" -- and  
23 not touch the trial date -- he couldn't give me an answer.

24 He just said, "No, I'm not going to do it. I don't  
25 agree to it. I want to get this case to trial."

1           You know, he's looking at this pot of gold that's  
2 just sitting there, and he thinks it's his money and he's  
3 entitled to it, and he wants it today.

4           We're just trying to get a fair result here. That's  
5 all. And, Your Honor, I --I agree with Ms. Colbath on all of  
6 this, that I think there should be a little leeway given to us  
7 because we're trying our best to get all this done on very  
8 difficult circumstances.

9           I've -- I've spoken my mind. Thank you, Your Honor.

10           MR. MURPHY: It just --

11           MS. COLBATH: Sir, I don't want to belabor things --

12           MR. MURPHY: I don't either but I --

13           MS. COLBATH: -- but if it would benefit --

14           MR. MURPHY: -- that -- I reject all of that.

15           MS. COLBATH: -- if it would benefit the Court,  
16 I would like to address a couple of the points. I'll make it  
17 very short and brief.

18           The three witnesses were subpoenaed for dates before  
19 September 30th. There was a representation made on the record  
20 before Magistrate Judge Hambrick -- because we anticipated  
21 that we could be in this situation -- that there would be  
22 absolutely no interference.

23           It -- it -- it is just incredible that professionals  
24 who are working for -- and Mr. Murphy is right. For 15 days  
25 I've had process servers. I've said "I need you to go during

1 the workday; please start at 7:30 in the morning, go back at  
2 lunch, and then go in the evening. If you don't get them  
3 during the week, please go back on Saturday."

4 We checked to make sure you could serve in some of  
5 these states on Sundays. People are going three times a day,  
6 no lights, nothing. And so this is full- -- all of this is  
7 fully briefed.

8 We did take -- and those witnesses were on my July  
9 list. They were on my August list. They were on my September  
10 list.

11 It wasn't until Judge Hambrick said "Come in with  
12 dates" that, out of the blue, drops from the sky -- Mr. Murphy  
13 says, "Oh, these people that I've told you all along you have  
14 to schedule through me, as of -- as of this morning, I --  
15 I don't control them anymore."

16 As to Sean Murphy, I -- I did send the process  
17 server. I've emailed the subpoena to all these three  
18 witnesses; I've asked them to confirm receipt, tell me if  
19 they're represented by counsel, "Would you accept service by  
20 email?" All my emails go into a black hole.

21 The -- Tuesday night at 7:50 I got an email from  
22 Sean Murphy agreeing to a date where we already have another  
23 deposition. I cannot be in two places at once. We have Emory  
24 Patterson going forward.

25 And the only date that Mr. Sean Murphy -- who was

1 just in South Carolina, and I feel very badly for his personal  
2 situation. But when Mr. Murphy says I could have taken it in  
3 July -- I wanted to. I was actually the only one who offered  
4 up a date before September 1 for a deposition, and Mr. Murphy  
5 didn't take me up on the deposition that he's going to take  
6 tomorrow.

7 So it -- he can't say it's totally my fault,  
8 I created this predicament. I actually was the only one  
9 trying -- very deliberately, intentionally, and repeatedly --  
10 to get counsel on the line to give me dates for the people  
11 that I listed.

12 So Sean Murphy -- I'm happy to take him. He can find  
13 some time next week. We've spent a fortune trying to serve  
14 those three witnesses. He -- he can find a time next Friday;  
15 some -- some date can be agreed upon for him.

16 Phippen and Mr. Randall should have been produced by  
17 Mr. Murphy. He controls them. He says, "Oh, Mr. Randall left  
18 the job in March of 2023."

19 Well, Your Honor, when you decided the attachment  
20 motion, you had before you a lengthy affidavit submitted by  
21 Mr. Patrick Murphy from Stephen Randall. And so you can't  
22 leave -- you know, you had control of him; you did an  
23 affidavit; you were in touch.

24 And he says "I haven't spoken to any of these  
25 people." Well, as of a few months ago, you were submitting

1 affidavits on their behalf.

2                   And it literally wasn't until Judge Hambrick said  
3 "I want you to do something on a Friday" and -- we -- I get  
4 it, after -- the end of business.

5                   And I'm like "I can't believe this. They're actually  
6 now going to take the position overnight that they don't  
7 control these people" -- that have been on my witness list,  
8 that are in their initial disclosures as being under the  
9 control -- as of today Randall is still listed in the initial  
10 disclosures as "I need to contact Mr. Murphy."

11                  The only change was this week -- this week -- he's  
12 just served me with amended initial disclosures that address  
13 Mr. Phippen.

14                  So, Your Honor, all of this -- this -- we have done  
15 the best we can to -- to serve subpoenas. We should have  
16 never been put in that position. These people were always --  
17 they remain under the control of this plaintiff.

18                  I understand their business stopped in March of 2023.  
19 That doesn't mean, if Mr. Murphy picks up the phone and  
20 says, "Neil, they need your deposition; could you give me  
21 three dates in the month of September or first two weeks in  
22 October" -- he would cooperate. He's still -- remains a  
23 member of BCB. He's going to share in the outcome here if  
24 there is any for BCB.

25                  So -- so this is absolutely not a situation of

1 MineOne sitting on their hands and not doing what was  
2 required. I can only write so many letters and demand that we  
3 all -- and then finally, out of frustration, write to the  
4 Magistrate Judge -- never had to do this to schedule  
5 depositions, I don't think, in any case I've ever been  
6 involved in in over 30 years -- write to my Judge to say  
7 "I can't get the people on the line; I'm going to need your  
8 help in getting depositions set."

9                   And she demanded -- "I want everyone's schedule;  
10 I want to know who your witnesses are." I complied.  
11 I submitted everything.

12                   I showed up at a meet and confer and -- a three-hour  
13 one -- and Mr. Murphy said "I don't have any dates. And  
14 Emory Patterson is out of the country. He won't be back until  
15 the day the discovery deadline ends." I mean, this is -- this  
16 is what we face.

17                   So it's fair here to get the depositions that are  
18 essential done. I can document I've been trying repeatedly  
19 since July. These are not new names. And, you know, if -- if  
20 people are -- are not -- not home for two weeks -- you know,  
21 I leave it to Your Honor whether you think that -- that  
22 someone was notified to maybe make themselves scarce because  
23 people generally return to their home after two weeks. These  
24 are -- these are working individuals, and they are just  
25 nowhere to be found.

1           I want to address one subpoena that -- Mr. Murphy has  
2 been -- said that my client controls a witness by the name of  
3 Huaili Zhang and another witness by the name of Chong Wang.

4           We have repeatedly told him we don't control those  
5 individuals. Ultimately, because it just became a repeated  
6 narrative from -- from Mr. Murphy every time he wrote to the  
7 Court -- I said "You know what? I'm going to facilitate  
8 getting Huaili Zhang's deposition."

9           I have served a subpoena on Huaili Zhang,  
10 JWJ Technologies, a Georgia LLC. And so why Mr. Murphy at  
11 this point -- since he has been harping for months that he  
12 wants that individual, I said "Here's his contact information;  
13 this is his last-known address; this is who he works for; you  
14 can readily serve a subpoena."

15           He didn't. I finally said "I've got to take this off  
16 the table. I'll subpoena him; I'll get the documents; I'll  
17 take his deposition." So Mr. Zhang is -- is available and  
18 where -- we anticipate getting documents.

19           MR. MURPHY: If it please the Court -- or maybe it  
20 doesn't please the Court. You've had a long day.

21           But I reject everything that Marc Gottlieb just  
22 represented to the Court.

23           Sorry, Marc.

24           MR. GOTTLIEB: Michael didn't get on the phone and  
25 conduct the meet and confer, Patrick? That didn't happen?

1                   MR. MURPHY: He did -- he was on the phone, and he  
2 did not conduct the meet and confer. You know it.

3                   MR. GOTTLIEB: That's not true --

4                   MR. MURPHY: He asked -- he asked Paula Colbath --  
5 (Simultaneous speaking.)

6 (Reporter seeks clarification.)

7                   MR. GOTTLIEB: Everybody else was there and they can  
8 attest to this.

9                   And you know that that's not true.

10                  THE COURT: Is Michael on with you now, Patrick?

11                  MR. MURPHY: I'm sorry?

12                  THE COURT: Is Michael with you now?

13                  MR. MURPHY: No. When -- no, he's not. He's down in  
14 Denver.

15                  MS. COLBATH: Might I add on that point that Judge  
16 Hambrick issued an order, Your Honor, dated September 9,  
17 2024 -- and because Mr. Michael Murphy's presence made the  
18 meet and confer -- I can -- brutal, counterproductive,  
19 unprofessional.

20                  When we raised what exactly took place in detail with  
21 her, she issued an order on 9/9/2024 that states in  
22 paragraph 5 -- this is how serious she took the issue and what  
23 had taken place -- "And that counsel, dash, not individual  
24 agents, officers, or the like of the parties, dash, are the  
25 only participants in any and all future meet and confers."

1                   She felt the need to issue a court order. It had  
2 been so destructive to have Mr. Michael Murphy on, and that's  
3 why the meet and confer lasted three hours.

4                   MR. MURPHY: So incorrect. It was unprofessional  
5 because of Ms. Colbath and her yelling and her refusal to tell  
6 us what we all knew, and that's that Jiaming Li has a Chinese  
7 passport and could have traveled to Hong Kong to give his  
8 deposition. But she would never answer Michael Murphy's  
9 question about that. I had to write a letter addressing  
10 Ms. Colbath's professionalism after that meet and confer.

11                  MR. GOTTLIEB: You just acknowledged that Pat -- that  
12 Michael Murphy was participating in this call, just there.

13                  MR. MURPHY: Of course I did. I've never denied  
14 that.

15                  It's just when you say, Mr. Gottlieb, that he  
16 conducted the entire meet and confer and that he was the  
17 problem, that's what I reject.

18                  MR. GOTTLIEB: He did. And that was true. And  
19 that's exactly what happened.

20                  And I stand by it and I'm an officer of the Court.

21                  MR. MURPHY: We all are.

22                  Enough is enough.

23                  THE COURT: The Court will enter its order. I'm not  
24 sure just what I'm going to say yet.

25                  Thank you.

1 MS. COLBATH: Thank you, Your Honor.

2 THE COURT: But you might be thinking about how  
3 I introduced -- introduced this case. I think today would be  
4 a good illustration of -- of where this case is headed.

5 And, frankly, after the hearings that I've had --  
6 and, I'm sure, the ones that Mark Carman had and I'm sure it's  
7 continuing with Stephanie Hambrick -- the Court certainly is  
8 no more in control of any of the facts of this case in terms  
9 of understanding than the first day that the case was filed  
10 and is represented by the -- the pleadings that appear in the  
11 file.

12 But that's not surprising because we are still very  
13 much engaged in the issues of everybody trying to find out  
14 what this case is about.

15 Thank you for your patience. We'll stand in recess.

16 MR. GOTTLIEB: Thank you, Your Honor.

17 MS. COLBATH: Thank you, Your Honor.

18 MR. MURPHY: Thank you, Judge.

19 (Proceedings adjourned at 4:53 p.m., September 26, 2024.)

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1 C E R T I F I C A T E  
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5 I, MELANIE HUMPHREY-SONNTAG, Federal Official Court  
6 Reporter for the United States District Court for the District  
7 of Wyoming, a Registered Diplomate Reporter, Certified  
8 Realtime Reporter, and Certified Realtime Captioner, do hereby  
9 certify that I reported by realtime stenography the foregoing  
10 proceedings contained herein on the aforementioned subject on  
11 the date herein set forth and that the foregoing pages  
12 constitute a full, true, and correct transcript.

13

14 Dated this 30th day of September, 2024.

15

16

17

18 /s/ Melanie Humphrey-Sonntag

19

20 \_\_\_\_\_  
21 MELANIE HUMPHREY-SONNTAG  
RDR, CRR, CRC  
Federal Official Court Reporter

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